

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

DURHAM SCHOOL SERVICES, INC.

Employer

and

Case 5-RC-16444

TEAMSTERS LOCAL UNION NO. 776
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Durham School Services, Inc., a Delaware corporation with an office and place of business in York, Pennsylvania, provides student transportation to school districts. By a petition under Section 9(c) of the National Labor Relations Act filed on May 5, 2010, Petitioner Teamsters Local No. 776 a/w International Brotherhood of Teamsters seeks to represent approximately 91 full-time and regular part-time drivers, monitors, mechanics, and maintenance administrators at the Employer's Morgan Lane facility in York, Pennsylvania. A hearing officer of the Board held a hearing and the Employer filed a brief with me.¹

As evidenced at the hearing and in the brief, the following issues are presented:

- (1) whether the York Central School District drivers (herein, the regular drivers) may properly be included in the same unit as the drivers for York County School of Technology (herein, the vocational drivers);
- (2) whether the mechanics may properly be included in the unit;
- (3) whether the maintenance administrator may properly be included in the unit;

¹ The Petitioner waived its right to file a brief.

- (4) whether monitors may properly be included in the unit; and
- (5) the date and manner of the election.

The Petitioner asserts that an appropriate unit consists of all full-time and regular part-time drivers, mechanics, the maintenance administrator, and the monitor. The Petitioner further asserts that a manual election should be held prior to the end of the current school year (which ends on June 9, 2010), or that the election should be conducted by mail as soon as possible.

The Employer argues that the regular drivers should be in a separate unit from the vocational drivers; that the mechanics may not be included with the drivers; that the maintenance administrator is should be excluded as a clerical employee; and that it does not employ monitors. The Employer also contends that the Board should conduct a manual election in October 2010, following the commencement of a new school year and after its routes and employee roster have stabilized.

The parties stipulated that any unit found appropriate should exclude the following classifications: all office clerical employees, dispatchers, assistant dispatchers, safety trainers, road supervisors, managerial employees, professional employees; guards, and supervisors as defined by the Act.

I have considered the evidence and arguments presented by the parties on each issue. As discussed below, I have concluded that the petitioned-for unit is appropriate with the modification that the monitor job classification is changed to standby. Accordingly, I am directing an election in a unit that consists of all full-time and regular part-time drivers, standbys, mechanics, and maintenance administrators, with the agreed-upon exclusions; there are approximately 91 employees in the unit found appropriate.

I. OVERVIEW OF OPERATIONS

The Employer provides school-bus services to York Central School District and York County School of Technology, and employs a total of approximately 85 bus drivers.

Approximately 90% of the Employer's drivers' routes are York Central routes, with the remaining 10% serving the vocational students. The Employer also employs four mechanics and one maintenance administrator. The parties dispute whether the Employer employs any individuals in the monitor classification; however, there is evidence that the Employer employs one employee classified as a "standby" who rides along on buses, but who is not presently certified to drive a school bus. All of the employees listed above work at the Employer's facility located at 160 Morgan Lane, York, Pennsylvania, the only facility involved herein.

The Employer's overall operations at Morgan Lane are overseen by Site Supervisor Todd Wisotzkey, and all of the drivers (including the standby/monitor) report directly to him.² The mechanics and maintenance administrator are supervised by Gary Watson.³

A. The Drivers

The regular drivers transport students to elementary, middle, and high schools, while the vocational drivers transport high-school-age children. The routes are designed by the respective school systems early in the school year to maximize efficiency, and are subject to change early in

² Wisotzkey was the only witness called at the hearing.

³ At one point, Wisotzkey testified that the maintenance administrator reports to the "maintenance supervisor." I have concluded that Wisotzkey was referring to Mechanic Supervisor Watson when he used the term "maintenance supervisor." First, I note the absence of any other reference to a maintenance supervisor at the Employer. I also note that Wisotzkey appears to use informal descriptions, rather than a formal job title when referring to Watson, by referring to him at times as the "shop foreman" and "shop supervisor." Next, I have considered that the maintenance administrator works in the shop area with the mechanics and Watson, and receives work assignments from Watson. Finally, I have considered that if there were a maintenance supervisor separate from Mechanic Supervisor Watson, then the only employee who is identified as reporting to this maintenance supervisor is the one maintenance administrator. I accept that it is inherently unlikely that the Employer would utilize a one-to-one supervisory ratio, and this factor combined with the others identified above, are the bases for my conclusion that where Wisotzkey refers to the maintenance supervisor, he is referring to Mechanic Supervisor Watson.

the school year based on a number of factors.⁴ All of the drivers work both morning and afternoon shifts, but their start times and end times vary depending each driver's specific route assignment.

All of the Employer's drivers use the same equipment and wear the same uniform, except that the school-issued identification badges vary depending on which school district the driver services.

The drivers are all paid on a flat, per diem basis. The record evidence regarding the drivers' wages is limited. Regular drivers are hired in a range of \$44 to \$53 per day, while vocational drivers are hired between \$52 and \$67. Wisotzkey testified, however, that all drivers are paid approximately the same rate of pay. All drivers have the same health benefits, and neither set of drivers receives vacation or sick leave. All drivers are on a single seniority system, and bid on available routes by seniority. The same discipline policy applies to both groups of drivers, and all drivers share a common drivers' lounge at the Employer's facility. There was no evidence presented that there are differing job qualifications such as licenses, certifications, or education requirements between regular drivers and vocational drivers.

Generally, drivers work during the school year and are laid off over the summer months.⁵ While most of the drivers return from one school year to the next, they are laid off at the end of each school year with no promise of recall, and are eligible to collect unemployment benefits during the summer. Returning drivers are not required to reapply when they resume working for the Employer the following school year, and will continue working on the same routes year to year. The Employer learns how many of its drivers will be returning the following school year by

⁴ Although some of the bus routes may change early in the school year, the Employer has not presented evidence that these route changes cause significant changes to its driver staffing. Instead, the evidence shows that bus stops may be eliminated or moved from one driver to another, but there is no evidence that the elimination of bus stops results in any driver being laid off.

⁵ Approximately one or two drivers will work over the summer months.

seeing which drivers show up at school-district held meetings shortly before the beginning of each school year. Approximately 10 to 15 percent of the drivers do not return each year.

B. Mechanics and Maintenance Administrator

The four mechanics and the maintenance administrator work in the Employer's shop area. The record treats the mechanics as a homogenous group, with each having the necessary skills to perform whatever maintenance or repairs the Employer's fleet may require. Unlike the drivers, mechanics are paid hourly and work year-round. Wisotzkey did not know how the maintenance administrator was paid, but she also works year-round. There is no evidence concerning their wage rates; however, they share the same health benefits as the drivers, and Wisotzkey testified that he was not aware of any benefits that mechanics and maintenance administrator received that drivers did not also receive.

If a driver encounters a maintenance or repair issue with his or her assigned bus, that driver will inform Mechanic Supervisor Watson or the maintenance administrator. Watson or the maintenance administrator will, in turn, report these concerns to the Employer's mechanics. It is undisputed that the maintenance administrator has daily contact with both the mechanics and the drivers.

The maintenance administrator orders parts, maintains records tracking the repair work performed on the buses, and performs filing, but she does not perform any mechanic work. Although Wisotzkey initially testified that 100% of the maintenance administrator's duties are clerical in nature, he later testified that she has more expanded duties. The maintenance administrator will travel to pick up parts that the mechanics may need to perform repairs or maintenance on the Employer's fleet. In addition, the maintenance administrator will drive a school bus at least once a day performing tasks ranging from moving school buses around the

Employer's yard to filling in as a driver substitute. The record does not indicate how frequently the maintenance administrator substitutes for a regular driver or a vocational driver.

C. Monitor/Standby

The Employer presented uncontradicted evidence that a "monitor" is a non-driver employee who is assigned to a troubled bus at the request of a school district to help maintain control of the bus. When a school district requests a monitor for a bus, the school district must pay for that additional service. Presently, neither York Central School District nor York County School of Technology pay the Employer to provide monitors, and the Employer does not have any employees performing what it considers monitor work.

For approximately the past two years, however, the Employer has employed one former driver who rides along on buses to assist new drivers and teach them their routes. This employee is not presently licensed to drive a bus, and there is no evidence of when, or if, he is expected to regain his bus license. In conflicting testimony, Wisotzkey refers to this person's job title as "standby driver," then as simply "standby" without the inclusion of "driver."

While both parties agree that this employee should be included in the unit, the Employer does not agree that he should be classified as a monitor or standby driver because he does not perform the duties of a monitor. Also, he cannot legally drive a bus and thus, he does not perform the duties of a standby driver. The Petitioner, on the other hand, contends that this employee should be classified as a monitor, and should be eligible to vote on that basis.

The record shows that this monitor/standby employee is supervised by Wisotzkey, and receives the same benefits as other employees. The record is unclear whether this employee works year round, whether he is paid by the day or the hour, and how his rate of pay compares to that received by regular drivers and vocational drivers.

II. APPROPRIATE UNIT

The Board uses a two step procedure to determine an appropriate unit under Section 9(b) of the Act. *Boeing Co.*, 337 NLRB 152, 153 (2001). First, the petitioned-for unit is examined; if that unit is found appropriate, the inquiry ends. *Id.* If that unit is found not to be appropriate, the alternative units suggested by the parties or of the Board's creation may be selected. *Id.* "In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions, commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *Id.* Generally, the goal is to select "the smallest appropriate unit encompassing the petitioned-for employees." *Bartlett Collins Co.*, 334 NLRB 484 (2001).

I have also considered the Board's long-standing policy that an overall or plant-wide unit is presumptively appropriate under the Act. *Livingstone College*, 290 NLRB 304 (1988); *Airco*, 273 NLRB 348, 349 (1984); *Kalamazoo Paper Box Corp.* 136 NLRB 134, 136 (1962) ("[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees." *Livingstone*, 290 NLRB at 305.) The burden of proving that the interests of a given classification of employees are so disparate from those of others that they cannot be represented in the same unit rests with the party challenging the unit's appropriateness. *Id.* The record reflects that the Petitioner is seeking to represent all of the Employer's employees, and I find that the Employer has not met its heavy burden to show that the petitioned-for unit is inappropriate.

Having considered all of the above-named factors, I find that the petitioned-for unit is appropriate, as modified to reflect the standby employee's correct job title.

A. Drivers

The Employer seeks to differentiate between regular drivers and vocational drivers; however, I find that these two groups of drivers may appropriately be included in the unit. All of the Employer's drivers perform essentially the same work – driving children to and from school. They are all based at the same facility, use the same equipment, wear the same uniform, receive similar pay, and enjoy identical benefits.⁶ In addition, the drivers have a common supervisor, common seniority system, common discipline system, and bid for the same open positions.

While the Employer seeks to distinguish regular drivers from vocational drivers because they drive different routes, there is no evidence that *any* of the Employer's drivers have the same route. Moreover, the record confirms that each of the drivers has his or her own route, as demonstrated by their differing start and end times, the number of schools and different ages served by the Employer, that employees bid on available routes (i.e. if the routes were identical, why would bidding be necessary), and the fact that employees tend to drive the same route year after year. Therefore, with so many common characteristics between them, I conclude that the regular drivers and the vocational drivers may properly be included in a single bargaining unit, as sought by the Petitioner.

B. Mechanics

The Petitioner seeks a unit that includes the Employer's four mechanics. The Employer contends that it is customary at its other facilities to separate the drivers and mechanics into separate units. I begin by recognizing that the Board's policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation*, 322 NLRB 723, 723 (1996), citing *Black &*

⁶ While Wisotzkey testified that the drivers are *hired* within somewhat different pay ranges, he also stated that they are *paid* approximately the same rate of pay.

Decker Mfg. Co., 147 NLRB 825, 828 (1964). As explained below, despite some differences in their working conditions from the drivers, the Employer has not shown that the inclusion of the mechanics makes the petitioned-for unit inappropriate, and, therefore, I have determined to include them in the unit.

In finding that the petitioned-for unit is appropriate with the inclusion of the mechanics, I note that the mechanics work at the same facility as the drivers, under the overall supervision of Site Supervisor Wisotzkey. Additionally, the mechanics' and the drivers' work are both centered on the same equipment, namely the Employer's fleet of school buses. Although they are paid on different bases, the record shows that the drivers and mechanics share the same fringe benefits. These facts establish that there is a sufficient community of interest between the mechanics and drivers to form an appropriate bargaining unit.

The Employer argues that "mechanics are ordinarily considered a separate and distinct employee unit from drivers and are generally not included in a bargaining unit because they do not share a 'community of interest' with drivers," citing *Overnite Transportation*. However, the Board's holding in that case was to reaffirm that the petitioned-for unit must be only *an* appropriate unit, and that either arrangement (i.e. mechanics included or excluded) has been found appropriate in the past. *Id.* at 724. Having found that drivers and mechanics share a community of interest, I conclude that the petitioned-for unit, including mechanics, is *an* appropriate unit for bargaining.

C. Maintenance Administrator

The Petitioner seeks to include the maintenance administrator in the unit. Neither in the hearing transcript nor in the Employer's brief does the Employer specifically contend that this employee should be excluded from the unit. In any event, I find that the maintenance

administrator shares a sufficient community of interest with the drivers and the mechanics to be included in the unit.

The record shows that the maintenance administrator performs functions that are undoubtedly integral to the work of the mechanics and drivers. Regarding the mechanics, the maintenance administrator conveys the drivers' reports of problems with the buses to the mechanics. Thereafter, she is responsible for ordering and picking up the parts the mechanics need to perform their jobs. Although she performs some clerical work, she also performs driving work at least once a day, and serves as a driver substitute when necessary. It is undisputed that the maintenance administrator interacts with both the mechanics and the drivers every day. Having considered this evidence, I find the maintenance administrator shares a sufficient community of interest with the drivers and mechanics that her inclusion in the unit does not make it inappropriate.⁷

D. Monitor/Standby

There is no dispute that the person presently performing the duties of monitor (according to the Petitioner)/standby (according to the Employer) should be included in any determined bargaining unit. The only issue is the label affixed to this employee's job classification. The Employer presented uncontradicted evidence that this employee does not perform the duties of a monitor, as that title is understood in the industry. Moreover, neither of the school districts that contract with the Employer pay for monitors. The Employer presented testimony that for the past two years, this employee has been paid as a "standby," and the Petitioner has presented no

⁷ As noted above, the record indicates that there are no other non-supervisory employees at the Employer; consequently, if the maintenance administrator is excluded she would be the only unrepresented employee at the Employer's York, Pennsylvania facility.

evidence to the contrary. Therefore, I find it appropriate to amend the petitioned-for classification of “monitor” to the employee’s correct job classification of “standby.”

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

(1) The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.

(2) The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

(3) The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

(4) A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

(5) Durham School Services, Inc., a Delaware corporation, with an office and place of business in York, Pennsylvania, is engaged in the business of providing full-service student transportation to school districts. During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations described above has derived gross revenues in excess of \$250,000 and has purchased and received at its York, Pennsylvania, facility, goods and materials valued in excess of \$5,000 directly from points outside the Commonwealth of Pennsylvania.

(6) The following employees of the Employer constitute a unit appropriate for the purpose of the collective bargaining within the meaning of Section 9(b) of the Act

All full-time and regular part-time drivers, mechanics, maintenance administrators, and standbys employed by the Employer at its York, Pennsylvania facility, excluding all office clerical employees, dispatchers, assistant dispatchers, safety trainers, road supervisors, managerial employees, professional employees, guards, and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union No. 776, a/w International Brotherhood of Teamsters. The date, time, and manner of the election (mail or manual) will be specified in a separate letter that the Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of issuance of the Notice of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of the issuance of the Notice of Election, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.) Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, 8th Floor, Baltimore, MD 21202, on or before **June 9, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever

proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website www.nlr.gov, by mail, by hand or courier delivery, or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC

by close of business on **June 16, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: June 2, 2010

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202